(1990) 07 KAR CK 0104

In the Karnataka High Court

Case No : W.Ps. No''s. 7568 to 7582 of 1990

All Karnataka Conductors Manufacturers Association APPELLANT

Vs

Karnataka State Electricity Board RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 227

Citation : (1990) ILR (Kar) 2483

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : R.U. Gouley and K.S. Desal, for the Appellant; S.G. Sundaraswamy and N.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Shivaraj Patil, J

1. The petitioners in these Writ Petitions have sought for the following reliefs:-

"a) Issue a Writ of Mandamus forbearing respondents from accepting any tender in respect of Enquiry No.P1/PC/KEB-2021/90-91 for procurement of Squirrel, Weasel and Rabbit ACSR conductor as per Annexure-A;

b) Issue a Writ of Mandamus directing the respondents to re-invite the tender for procurement of Squirrel, Weasel and Rabbit ACSR Conductor and conduct proceedings for the opening of the said tenders in the presence of the petitioners/ tenderers;

c) Issue such other appropriate Writ/Order/ Direction as deemed fit in the interest of justice;

d) Issue an interim order pending disposal of the above Writ Petition restraining respondents from accepting the tender of any Tenderer in respect of Enquiry No. P1/PC/KEB-2021/90-91 (Annexure-A), in the interest of just justice."

2. Petitioner-1 is All Karnataka Conductors Manufacturers Association and petitioners-2 to 15 are its Members. The respondents invited tenders in respect of tender bearing No. 2021. The petitioners-2 to 15 are tenderers in respect of this tender.

3. The respondents had notified in certain national newspapers in respect of the tender in question as can be seen from Annexure-C and D, newspaper cuttings of Deccan Herald and Indian Express dated 11-2-1990 and 3-3-1990 respectively.

4. The petitioners further submit that the Chief Engineer - respondent-2 herein by the letter dated 20-2-1990 communicated to all tenderers that due date which was fixed on 21-2-1990 was postponed to 14-3-1990 due to request from a number of Conductor Manufacturers- On 14-3-1990 tender should have been opened when the petitioners were present in the office of the respondents. On 14-3-1990 the petitioners were not informed as per norms of public tender system and that they were orally informed that the date and time of opening the tender will be intimated to them later. The petitioners further complain that the respondents never intimated them thereafter about the date and time of opening the tenders subsequent to 14-3-1990. When the petitioners did not hear of any date and time with regard to the opening of the tender a telex as per Annexure-E was sent to the Chairman, Karnataka Electricity Board, Bangalore, with a request to reconsider the whole issue in a pragmatic way and extend tender accordingly. Thereafter on 16-3-1990 the petitioners submitted a representation as per Annexure-F to the Minister for P.W.D. and Energy, Government of Karnataka, and also wrote a letter to the Chief Minister, Government of Karnataka, with a copy to the Minister for PWD as per Annexure-G dated 26-3-1990.

5. The petitioners further submit that they reliably learnt that respondent-1 Board is intending to favour a person of their choice on extraneous reasons and that is why the opening of tenders were not notified subsequent to 14-3-1990. Thus the sanctity of tender is lost and the petitioners apprehend manipulation and replacement of tenders. The petitioners, had requested for extension of due date for submitting tender, in view of the ensuing Budget scheduled to be presented in the Parliament on 19-3-1990 on the ground that presentation of Budget may have implications on the rates of different items of the tender. The petitioners have further averred that the tenders were not opened on 14-3-1990 when the petitioners were present. On the other hand they were opened on. 15-3-1990 in the absence of the petitioners which was highly illegal and intended to benefit person of the choice of the respondents. Thus the petitioners were deprived of their valuable right to participate in enquiry proceedings in respect of the said tender bearing No. 2021. Since the request of the petitioners for reopening the matter and to re-invite the tenders was not, considered by the respondents the petitioners have approached this Court by filing these Writ Petitions on 4-4-1990.

6. On 6-4-1990 when these cases were posted for preliminary hearing this Court directed the Standing Counsel for K.E.B. to take notice. The respondents having

taken notice filed their objection statement on 11-4-1990. On 24-5-1990 this Court directed the petition to be posted for final hearing as agreed upon by both Counsel and restrained the respondents from finalising the tender. In view of the urgency of the matter the case was taken up for final hearing and heard. During the pendency of the proceedings the petitioners filed reply statement dated 21-5-1990, additional statements dated 28-5-1990 and 4-6-1990. The respondents in addition to the objections statement filed on 11-4-1990 filed additional statement of objections dated 24-5-1990. At the hearing it was made clear to both sides that all the additional statements and statements of objection will be taken into consideration in dealing with the case.

7. The stand of the respondents as can be seen from the statement of objections filed by them is that the 2nd respondent is the Officer of the 1st respondent who is the authority to call for tenders and to fulfil the requirements of the Board. The 2nd respondent called for tenders as per Annexure-A to supply three types of ACSR conductors. According to the terms of the tender the last date for submission of the tenders by the interested manufacturers was on or before 3 p.m. on 21-2-1990 and the tenders were to be opened at 4 p.m. on 21-2-1990. The petitioners and various other manufacturers from Karnataka and outside Karnataka submitted their tender forms.

8. The first petitioner on 12-2-1990 gave a representation to the 2nd respondent requesting to postpone the opening of the tenders on the grounds:

a) that 30 days time is not given for submission of the tenders from the date of publication of the tenders in the newspaper; and

b) that the Union budget is scheduled to be tabled before the Parliament in the third week of March 1990.

A copy of this representation is filed at Annexure-R-1. The 2nd respondent forwarded the same to the 1st respondent with a recommendation to postpone the opening of the tenders from 21-2-1990 to 4-4-1990. In view of this recommendation the due date was postponed from 21-2-1990 to 14-3-1990 at 4 p.m., having regard to the recommendation made by the first respondent that they should have gap of clear 30 days for opening of the tenders from the date of publication of the notification inviting tenders in the newspapers. This postponement is also published in the newspaper ''Deccan Herald'' as per Annexure-C.

9. The 2nd respondent submits that on 14-3-1990 the tenders had to be opened at 4 p.m. But the petitioners and some interested persons appear to have approached the Minister for Power, Government of Karnataka and requested him to give instructions to the Board to postpone the opening of the tender on 14-3-1990 and that the Minister was pleased to send for the Technical Member of the Board as the Chairman was out of station. Therefore the Technical Member along with the Additional Secretary met the concerned Minister and had a discussion with the Minister. The Technical Member and the Additional Secretary

brought to the notice of the concerned Minister that it is not desirable to postpone the opening of the tender as the aforesaid three types of ACSR conductors were required by the Board urgently in large quantity and that even if there is escalation of price of aluminium in the budget there is a clause in the tender to protect the interest of the tenderers so as to take care of such escalation in price. However, since the Chairman was not in station on 14-3-1990 the Minister directed the Technical Member to instruct the 2nd respondent to tentatively postpone the opening of the tenders from 14-3-1990 to 15-3-1990 at 3 p.m. Accordingly, the Technical Member instructed the 2nd respondent to postpone the opening of the tenders from 14-3-1990 to 15-3-1990 at 3 p.m. In this regard the Technical Member has submitted a note placing on record his meeting the concerned Minister and with regard to the instructions received from the Minister to postpone the opening of the tender from 14-3-1990 to 15-3-1990.

10. On 14-3-1990 the representatives of the tenderers were present in the Office of the 2nd respondent at 4 p.m. The 2nd respondent after receiving instructions from the Technical Member to postpone the opening of tender from 14-3-1990 to 15-3-1990 at 3 p.m. made a note of the same in the proceedings recorded in P.C. Register. The representatives of the tenderers present, have put their signatures against the names of their firms. The tenderers were fully aware of the postponing date from 14-3-1990 to 15-3-1990 as can be seen from Annexure-E the extract of the P.C. Register. In all 50 bids were received in response to the enquiry. These 50 bids were taken out of the tender box. They were listed and were wrapped in a cloth and further wrapped in thick paper, tied and sealed in the presence of the representatives of the firms who were present in the chambers of the 2nd respondent at 4 p.m. on 14-3-1990. The bundles so sealed wore signed by such of the representatives who opted to sign on bundles (four numbers) and these sealed bundles were kept in a safe custody in the chamber of the 2nd respondent- This fact, the 2nd respondent immediately intimated to the 1st respondent by his letter dated 14-3-1990 as per Annexure-R-4.

11. On 15-3-1990 the Chairman of the 1st respondent gave instructions to the 2nd respondent to open the tenders on 15-3-1990 as scheduled according to the instructions of the Chairman of the 1st respondent. 50 offers received were opened on 15-3-1990 at 4.30 p.m. in the presence of various representatives of the petitioners and as well as others as they were fully aware that the opening of the tenders was tentatively fixed on 15-3-1990 and that the 2nd respondent has immediately confirmed the opening of the tenders by addressing a letter dated 15-3-1990 to the 1st respondent as per Annexure-R-5. The respondents have denied the allegations of mala fide made in the Writ Petitions against them.

12. The respondents further submit that the petitioners have filed the Writ Petitions with mala fide intention of preventing the respondents from proceeding with the confirmation of the tender in favour of the lowest tenderers. They further submit that after opening of the tenders the petitioners having come to

know that the rates offered by them were higher as against others and as such they have come forward with the Writ Petitions to scuttle the proceedings. Further in case the tenders are not finalised the respondents will be compelled to purchase the required material from the petitioners on the basis of the rates offered for previous year which are higher and thereby the petitioners want to make wrongful gain by supplying the required quantity of ACSR conductors at higher price. The respondents in their objection statement dated 24-5-1990 besides stating other things have stated that in case the required quantity of ACSR conductors is to be purchased from the previous tenderers whose quotation is more than the lowest tender now quoted, Board is going to incur loss to an extent of 3.3 crores of Rupees as can be seen from para-4 of the additional statement filed on 24-5-1990.

13. Sri R.U. Gouley, learned Counsel for the petitioners contended as follows:-

1) There was no gap of 30 days between the late of publication inviting tenders and the due date and thereby interested persons were denied the opportunity of offering their tenders;

2) Postponing the due date from 21-2-1990 to 14-3-1990 prior to the date of presentation of Central budget was bad;

3) The last date for receiving tenders and opening of the tenders must be the same;

4) Opening of tenders was not published in the press as was done earlier when due date was postponed from 21-2-1990 to 14-3-1990 and the individual intimations were also not given postponing the opening of the tenders from 14-3-1990 to 15-3-1990 as such the same was illegal;

5) Opening of the tenders in the absence of petitioners, vitiated the enquiry proceedings in respect of this tender;

6) The action of the respondents in taking out the bids from the tender box on 14-3-1990 and opening the tenders on 15-3-1990 without intimating the petitioners being arbitrary is violative of Article 14 of the Constitution;

7) By such action of the respondents sanctity attached to the tender is violated and gave scope for manipulation; and

8) Public interest will be jeopardised and sacrificed by the proposed acceptance of lowest tender of Nickhil Deep Cables Pvt. Ltd.

14. Sri S.G. Sundaraswamy, learned Senior Counsel for the respondents while meeting everyone of the contentions raised by Sri Gouley, learned Counsel for the petitioners submitted that the petitioners have no grievance as to the events happening upto 14-3-1990. Their only grievance is postponing of the opening of tenders from 14-3-1990 to 15-3-1990. From the material on record it cannot be said that the action of the respondents in any way was arbitrary or illegal and on the other hand public interest will greatly suffer in case reliefs sought for by the

petitioners are granted. The material, namely, ACSR conductor is urgently required by the respondents to serve the public interest and any delay will result in substantial financial loss to the respondent-1 - Board besides affecting the public interest. In this regard he has placed certain statements giving comparative figures. The K.E.B. which is already suffering loss cannot be made to suffer further. By opening the tenders on 15-3-1990 no prejudice was caused to the petitioners.

15. In the light of these contentions the case is to be examined. The grievance of Sri Gouley, that there was no gap of 30 days between the date of publication of notification calling for tenders and the due date did not survive when due date was postponed from 21-2-1990 to 14-3-1990. If the date of publication of the Notification Annexure-C is taken into consideration there is a gap of more than 30 days between the two dates.

16. As regards the implications of presentation of Central budget on the prices of various items, it is to be stated that sufficient safeguard is made in the tender conditions vide Annexure-A. Apart from this it was not pointed out as to how the petitioners were prejudiced in view of the presentation of the Union budget subsequent to opening of the tenders. Sri Sundara-swamy, learned Counsel submitted that there are as many as 50 tenderers who have offered their bids. If the budget had the implications it was common to all. Moreover in view of the provision made for escalation of prices the grievances of the petitioners cannot be sustained. Hence the second contention of Mr. Gouley is rejected.

17. Sri Gouley, further contended that the date for receiving the tenders and opening of the tenders must be one and the same. In the instant case the due date was 14-3-1990 and the tenders ought to have been opened on 14-3-1990. In this regard he drew my attention to Clause (5) of Annexure-A which reads thus:-

"OPENING OF TENDERS:

All tenders received will be punctually opened by an Officer of the Board on due date and time."

Further he pointed out from Clause 1.09 of Annexure-A under the heading - General Terms and Conditions of Tender Enquiry which is as follows:-

"In case of unforeseen condition the tender opening due date if declared as holiday the tenders shall be opened on the next working day."

He also relied upon note in Annexure-C to the effect that the last date of issue of tender documents is the working day previous to the date of opening of tender within 3 p.m. Tenders will be received up to 3 p.m. and will be opened at 4 p.m. on due date. Depending on the notifications produced along with additional grounds he submitted that on, previous occasions the respondents have mentioned the due dates for opening the tenders accordingly. No doubt if we look to the material referred above the due date and the opening, date of tenders is to be the same. But looking to the facts of this case under what circumstances the opening of tenders was postponed from 14-3-1990 to 15-3-1990 and in the absence of any prejudice caused to the petitioner it cannot be said that the enquiry proceedings in respect of the tender in question are vitiated. There-may be situations that opening of the tenders on a particular date may not be possible. The conditions under Clause 1.09 in Annexure-A under the heading "General Terms and Conditions of the Tender Enquiry" is not exhaustive but they are only illustrative.

18. Sri. R.U. Gouley vehemently contended that postponement of the opening of the tenders from 14-3-1990 to 15-3-1990 without intimating the petitioners about the postponement and opening the tenders on 15-3-1990 depriving the petitioners of opportunity of participating in the enquiry vitiated the enquiry proceedings in respect of the tender in question. He contended that the taking out the bids from the tender box on 14-3-1990 and wrapping them in separate papers and keeping them in sealed covers in the custody of the 2nd respondent was unwarranted. At any rate the respondents ought to have intimated the petitioners either individually or by publication in the newspapers as it was done on earlier occasion when the due date was postponed from 21-2-1990 to 14-3-1990. As to the P.C. Register the relevant extract of which is filed at Annexure-R-3 he urged that the entries made in the Register on pages 130 and 129 do not inspire confidence and that some manipulation has taken place.

19. I have perused the original P.C. Register and concerned records. On page 130 entries are made indicating names of 43 persons who have given their tender i.e., serial Nos. 1 to 43. The names of remaining firms from serial Nos. 44 to 50 are entered at page, 129 and the date on page 130 was altered, to 14-3-1990. Further an endorsement is made on page 129 on 14-3-1990 to the effect that the opening of the above 50 tender documents was tentatively postponed to next day i.e., 15-3-1990 at 3 p.m. or until further orders. The bids were wrapped up in a cloth and again wrapped up in thick paper and sealed duly tying with thread in the presence of the representatives of the tenderers. Some Officer has signed in Kannada one line above the endorsement and put the date as 14-3-1990. Further endorsement on the same page shows that the seals were broken in the presence of the representatives present in the conference hall on 15-3-1990 at 4 p.m. The Officer has endorsed accordingly and has put the data as 15-3-1990.

20. Sri Sundaraswamy, learned Counsel tried to explain that originally the due date was 21-2-1990 and in view of the postponement they have changed the date on page 130 as 14-3-1990. Since there was no place on page 130, on page 131 entries wore made in respect of other tenders. Entries in respect of the remaining bids were made on page 129 and on the same page endorsements are made on 14-3-1990 and 15-3-1990. He further submitted that in the absence of any specific allegations of mala fides against any particular individual Officer the grievance of the petitioners in this regard are of no consequence. About the

happenings on 14-3-1990 and 15-3-1990 the 2nd respondent has kept the Additional Secretary, Karnataka Electricity Board informed as can be seen from Annexures-R4 and R5. The petitioners have only stated in the Writ Petition and additional grounds that the opening of tenders was postponed to 15-3-1990 without intimating the petitioners and they were opened on 15-3-1990 in order to favour one M/s. Nikhil Deep Cables Pvt. Ltd. for extraneous consideration.

21. It is not the specific case of the petitioners that between 14-3-1990 and 15-3-1990 any manipulation has taken place or any fresh tender is inserted. Further, it is also not the case of the petitioners that the rates and figures quoted by various tenderers were known on 14-3-1990 so as to create any manipulation. Under the circumstances, I am unable to persuade myself to accept the allegations of the petitioners made in the Writ Petitions as to the manipulations so as to finalise the tender in favour of M/s. Nikhil Deep Cables Pvt. Ltd. at this stage except the fact that the rates quoted by the said M/s Nikhil Deep are the lowest as can be seen from the records. Whether this tender is to be accepted or not or any other tender is to be accepted considering various aspects, is a matter for the Competent Authorities to decide.

22. The respondents have placed before me comparative figures in the form of a statement of the rates of the lowest quoted firms and the second lowest quoted firm according to which the rates offered by M/s Nikhil Deep are the lowest and the difference between the second lowest quoted firm and that of M/s. Nikhil Deep comes to Rs. 2.95 crores.

23. It is to be noticed that most of the petitioners have their offices at Bangalore and they were aware of the due date as 14-3-1990 and in the normal course it is expected that they would know of the postponement and the persons who were present on 15-3-1990 have also participated in the enquiry. Be that as it may. In view of what is stated above it cannot be said that any manipulation has taken place or the petitioners are prejudiced in any way. Hence, I am of the opinion that the opening of tenders on 15-3-1990 instead of 14-3-1990 has not vitiated the enquiry proceedings in respect of the tender in question. Thus it cannot be said that the action of the respondents in this regard was either arbitrary or illegal, so as to complain violation of Article 14 of the Constitution.

24. Coming to the question of public interest, Sri. Gouley submitted that at the rates quoted by M/s. Nikhil Deep Cables Pvt. Ltd., it is not possible for them to supply the material without sacrificing the quality. Annexure-A, the terms and conditions clearly show that sufficient precaution is taken to see that the quality is controlled. This apart the respondents have their men and machinery to see that proper supply of the material is made and quality is maintained. As pointed out by Mr. Sundaraswamy learned Counsel that if the tenders are to be re-invited as prayed for by the petitioners it will only further delay the supply of material which is urgently required. It may also lead to escalation of cost.

25. Learned Counsel for the petitioners has cited number of authorities for the

proposition that an executive authority must be vigorously held to the standards by which it professes its actions to be judged. In this regard he strongly relies on the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . Further he also relied on the Division Bench decision of this Court in the case of M/s. The Indian Hume Pipe Co. Ltd. and another Vs. Bangalore Water Supply and Sewerage Board and others,

26. In both these cases the question for consideration was whether a contract to be awarded to a person who did not satisfy prerequisites or conditions of eligibility applying for a contract offering tender. But in the instant case such a question does not arise. It is not the case of petitioners that any one of the persons/firms were not eligible to offer their tenders. It is now well settled by the long line of decisions that an executive authority must be vigorously held to the standards by which it professes its action to be judged and that the State or instrumentality of the State must act fairly and their action should be without any aversion, malice or affection. But in the case on hand the question is whether the action of the respondents in postponing of the tenders from 14-3-1990 to 15-3-1990 without giving intimation as urged by the petitioners has resulted in any prejudice to the interest of the petitioners or the public, is a matter for consideration.

27. Sri. Sundaraswamy, learned Senior Counsel relies on the case of Fasih Chaudhary Vs. Director General, Doordarshan and Others, . In the said decision the Supreme Court has observed thus in paras-5 and 6:-

5. It is well-settled that there should be fair play in action in a situation like the present one, as was observed by this Court in Ram and Shyam Company Vs. State of Haryana and Others, . It is also well settled that the authorities like the Doordarshan should act fairly and their action should be legitimate and fair and transaction should be without any aversion, malice or affection. Nothing should be done which gives the impression of favouritism or nepotism. See the observations of this Court in Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation,

6. While, as mentioned hereinbefore, fair play in action in matters like the present one is an essential requirement similarly, however, ''free-play in the joints'' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will."

28. When the tenders were opened on 15-3-1990 no prejudice is shown to have been caused to the petitioners as already discussed above.

29. In the case of G.J. FERNANDEZ v. STATE OF KARNATAKA AND ORS 1990(2) SC 488. it is held that any non-conformity with or relaxation in the prescribed

standards allowed in case of any intending tenderer, if not resulting in substantial prejudice or injustice to any of the parties or to the public interest in general, would not be bad in the said case the Supreme Court has observed thus in paragraphs-11 and 15:-

"11. Should the MCC have been denied altogether the right to tender for the contract consequent on the delay in submitting this document is the second question that arises for consideration. Sri Parasaran, for the appellant would have us answer this question in the affirmative on the principle enunciated by Frankfurter, J, and approval by this Court in Rama Dayaram Shetty v. International Airport Authority of India. Bhagwati, J. (as his Lordship then was) formulated in the following words a principle which has since been applied by this Court in a number of cases: (SCC page 503, para 10 and page 522, para 34).

"It is a well settled Rule of Administrative Law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This Rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Saton, where the learned Judge said:

"And executive agency must be rigorously held to the standard by which its professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved Rule of Administrative Law is now firmly established and if I may add, rightly so. He that takes the procedural sword shall perish with sword."

"This Court accepted the Rule as valid and applicable in India in A.S. Ahluwalia v. State of Punjab, and in subsequent decision given in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi. Mathew, J, quoted the above-referred observation of Mr. Justice Frankfurter with approval. It may be noted that this Rule, though supportable also as emanation from Article 14, does not rest merely on that Article. It may an independent existence apart from Article 14. It is a Rule of Administrative Law which has been judicially, evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the Judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the Rule from the equality clause of the United States Constitution, but evolved it purely as a Rule of Administrative Law. Even in England, the recent trend in Administrative Law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade''s Administrative Law, 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding Administrative law.

XXX XXX XXX But, we are inclined to agree with the respondent''s contention that while the rule in Ramana case will be readily applied by Courts to a case where a person complains that a departure from the qualifications has kept him out of the race, injustice is less apparent where the attempt of the applicant before Court is only to gain immunity from competition. Assuming for purposes of argument that there has been a slight deviation from the terms of the NIT, it has not deprived the appellant of its right to be considered for the contract; on the other hand, its tender has received due and full consideration. If, save for the delay in filing one of the relevant documents, MCC is also found to be qualified to tender for the contract, no injustice can be said to have been to the appellant by the consideration of its tender side by side with that of the MCC and in the KPCC going in for a choice of the better on the merits. The appellant had no doubt also urged that the MCC had no experience in this line of work and that the appellant was much better qualified for the contract. The comparative merits of the appellant vis-a-vis MCC are, however, a matter for the KPC (counseled by the TCS) to decide and not for the Courts. We were, therefore, rightly not called upon to go into this question."

30. It is seen from the records that the respondents require huge quantity of ACSR conductors and almost all the tenderers have not come forward to supply the entire quantity of material as required. Further the learned Counsel for the respondents also submitted that the petitioners may not go out of race totally. The respondents may take ACSR Conductor of different types covered under the tender in question from among the petitioners to fulfil the entire requirement at the rates on par with the rates that would be accepted under the tender. Hence it is to be seen whether any one of the parties who have offered their tenders in the instant case suffer any initial ineligibility from of offering tenders and further any real prejudice is caused to the petitioners who have also offered their tenders in time. As observed in the case of Fernandez, the principles enunciated in Ramana Dayaram Shetty''s case will be rightly applied by Courts to a case where a person complains that a departure from the qualifications has kept him out of the race. Injustice is less apparent where the attempt of the applicant before the Court is only to gain immunity from competition.

31. Learned Counsel for the respondents also relied on the case in Indian Hume Pipe Co. Ltd. Vs. Bangalore Water Supply and Sewerage Board, . In the said case Shivashankar Bhat, J, has held in paragraph-8 as follows:-

"8. Since the act impugned is of the instrumentality of the State, same is liable to be tested by the touch-stone of reasonableness and unarbitrariness. This test is applied, not to enforce the right of anyone of the parties who submitted the tender. The object of the judicial examination is to see whether the public interest would suffer, by the transaction in question, and the State has failed to play fairly while entering into the transaction. Court''s jurisdiction is invoked usually, by one of the parties, who made the tender offering to purchase the public property or articles put up for sale at a price which he asserts as the highest, or, offering to supply goods or works to the Government of a State instrumentality, at a rate which he asserts as the lowest. In such a situation, Court is not concerned as to how far, the party''s interest suffered, by non-acceptance of his tender. The judicial review is permitted., in order to safeguard the public interest."

32. By now it is the crystallised judicial view that the State whether by way of giving job or entering into contract or otherwise cannot act arbitrarily at its sweet will but its action must be in conformity with some principle which meets the test of reason and relevance. The High Court does not interfere in cases under Articles 226 and 227 of the Constitution of India and refuses to issue any Writ in the event it is found that substantial justice has been done to the parties or in the larger interest it would not be prudent to issue such a Writ. In this case on hand, it cannot be said the action of the respondents in opening the tender on 15-3-1990 has prejudiced the petitioners or public interest in any way. On the other hand, interfering with the action of the respondents may cause burden to the public exchequer in view of the fact that the respondent-Board will be put to financial loss in terms of few crores of Rupees and public interest will also suffer in case the prayer made by the petitioners, namely, issuing Writ of Mandamus directing the respondents to re-notify the tender for procurement of Squirrel, Weasel and Rabbit ACSR conductor.

33. Hence in the light of what is stated and discussion made above, I am of the opinion that these Writ Petitions have no merits and as such they are liable to be dismissed. Accordingly, the following order is passed:-

The Writ Petitions are dismissed.